

No. 638

FILED
AUG 20 1916

JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916.

INTER-ISLAND STEAM NAVIGATION
COMPANY, LIMITED, an Hawaiian
Corporation,

Plaintiff in Error,

vs.

GEORGE E. WARD,

Defendant in Error.

Error to the
Circuit Court
of Appeals,
Ninth Circuit.

**MOTION TO DISMISS WRIT OF ERROR FOR WANT OF
JURISDICTION AND TO AWARD DAMAGES.**

AFFIDAVIT AND NOTICE

E. A. DOUTHITT,

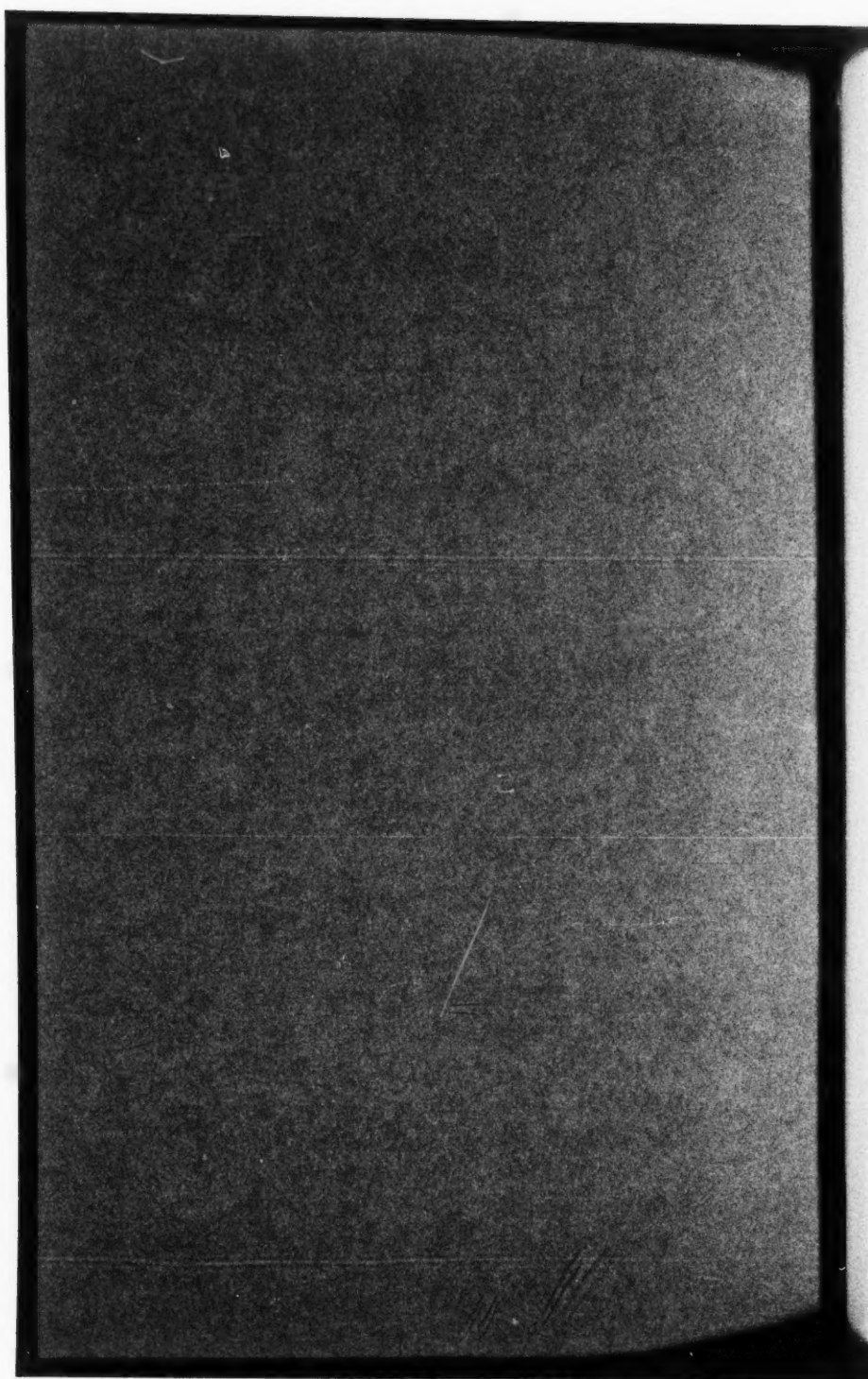
Attorney for Defendant in Error.

Filed this _____ day of _____, 1916.

J. D. MAHER, *Clerk.*

By _____

Deputy Clerk.



In the Supreme Court of the United States

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To the Honorable the Chief Justice
and the Associate Justices of the
Supreme Court of the United States:

Now comes the above named defendant in error by
E. A. Douthitt, his attorney, and hereby moves this
Honorable Court to dismiss the writ of error hereto-
fore issued herein, and to award damages, upon the
following grounds, to wit:

First: That pursuant to the Act of Congress of
January 28, 1915, ch. 22, being "An Act to codify,
revise and amend the laws relating to the judiciary,"
approved March 3, 1911, the judgment of the Circuit
Court of Appeals for the Ninth Circuit heretofore
made, rendered and entered herein on the 15th day

of May, A. D. 1916, was and is final in said cause, and error does not lie thereto from this Court.

Second: That this Honorable Court has no jurisdiction to hear or determine this cause or to review the said judgment of said Circuit Court of Appeals, in that there is no federal question involved herein.

Third: That this cause is not one of those embraced within the provisions of Sections 128 and 241 of the Judiciary Act of March 3, 1911, which allow writs of error from this Court to the final judgments of the Circuit Court of Appeals.

Fourth: That damages and interest be awarded defendant in error here, for that the said writ of error was and is prosecuted merely for delay, and by the issuance thereof the proceedings of the inferior court have been and are delayed.

This motion is made on the foregoing grounds and is based upon the record herein, the printed brief filed herewith, and upon the affidavit of E. A. Douthitt hereto attached, and made part hereof.

Dated at Honolulu, Hawaii, this 15th day of August, A. D. 1916.

GEORGE E. WARD,
Defendant in Error.

By E. A. DOUTHITT,
His Attorney.

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AFFIDAVIT OF E. A. DOUTHITT

United States of America,

Territory of Hawaii,

City and County of Honolulu.

} ss.

E. A. Douthitt, being first duly sworn, deposes and says: That he is a member of the bar of this Court, and that at all the times herein mentioned was and still is the attorney for the above named defendant in error.

That the following facts are shown in the Congressional Record of the House of Representatives and the Senate of the United States in so far as concerns the amendment of Section 246 of the Judicial Code and contained in the Act of January 28, 1915:

That the said act was originally H. R. 19,076, and when the amendment was proposed to Section 246, the right of error or appeal to this Court as allowed by

said section from the final judgments of the Territory of Hawaii in cases involving more than five thousand dollars was eliminated therefrom as shown by the Congressional Record of the House of date December 16, 1914, at page 282.

The report of the Judiciary Committee of the Senate, at page 435 of the Senate Congressional Record, of date December 21, 1914, states that the object of said amendment was to relieve the Supreme Court of the United States from the necessity of reviewing cases from the Supreme Courts of Porto Rico and Hawaii as involve no federal question and when the amount involved is more than five thousand dollars.

That it appears from pages 1544, 1545 and 1546 of the Congressional Record of the Senate, of date January 14, 1915, that the object and purpose of the amendment to Section 246 of said Code, which provides that "writs of error and appeals from the final judgments and decrees of the Supreme Courts of the Territory of Hawaii and of Porto Rico wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the value of five thousand dollars, may be taken and prosecuted in the Circuit Courts of Appeals," was to relieve this Court of the review and determination of such cases and to transfer the jurisdiction of the same to the Circuit Courts of Appeals, whose judgments therein should be final.

E. A. DOUTHITT.

Subscribed and sworn to before me this 15th day
of August, A. D. 1916.

CLAUS L. ROBERTS, (Seal.)

*Notary Public, First Judicial Circuit,
Territory of Hawaii.*

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NOTICE

*To the Above Named Plaintiff in Error,
and to Messrs. Smith, Warren & Sutton,
and Messrs. Holmes & Olson, Its Attorneys:*

You and each of you will please take notice that the foregoing motion to dismiss the writ of error, etc., herein will be presented to the Honorable the Supreme Court of the United States on the opening day of the term of said Court, to wit: on Monday, the 9th day of October, A. D. 1916, when the said Court convenes on said day, or as soon thereafter as the matter may be heard, at the courtroom of said Court, in the Capitol Building, Washington, D. C.

Yours, etc.,

E. A. DOUTHITT,

Attorney for Defendant in Error.

